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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,208	11/18/2003	Theresa N. Powless	1791-000001	4843

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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/716,208	Applicant(s) POWLESS, THERESA N.	
	Examiner Son T. Nguyen	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10,12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10,12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-10,12,13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ireland et al. (as above) in view of Smith (US 2803418).

For claim 1, Ireland et al. teach a method for preventing tipping of a flower pot formed of an open top container having a generally vertical wall formed with an upper edge portion, comprising:

providing a retainer of a thin, bendable, but relatively stiff wire rod (col. 5, lines 10-53), formed in the shape of a vertically-elongated, substantially straight, unbent, stem portion 16 and with the stem portion having an upper end portion bent downwardly into a hairpin-like formation to form a downwardly opening, inverted U-shaped hook portion 22; with the hook portion having one leg formed by the stem portion, and having a short leg for extending downwardly adjacent the stem portion, with the leg portions being spread apart for holding the wall upper edge portion between them while the short leg may extend downwardly into the pot and into any potting material contained in the pot while the substantially straight, unbent, stem portion extends downwardly along side of the pot and continuing for a distance relative to the pot for extending into the ground; resting the pot upon a ground surface;

engaging the hook portion over the upper edge portion of the pot and extending the rod downwardly from the hook portion closely adjacent to the outside surface of the pot wall while the pot is resting upon the ground surface and pushing the stem portion downwardly along side of the pot and continuing for a distance relative to the not so that a lower portion of the stem portion enters into the ground a sufficient distance to hold the pot against tipping.

However, Ireland et al. do not specifically describe their pot having a closed bottom. Note, functional and intended use language such as “may extend downwardly into the pot” and “may extend downwardly into the pot and into any potting material contained in the pot”, which the retainer/method of Ireland et al. can perform these functions (MPEP 2114).

Smith teaches a pot with a closed bottom. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a bottom as taught by Smith on the pot of Ireland et al. in order to contain soil therein, and in addition, pots with bottoms are notoriously well known in the art.

For claim 2, Ireland et al. as modified by Smith (emphasis on Ireland et al.) further teach said wire rod being formed of a relatively resilient wire material, and arranging the hook portion to receive and resiliently grab the upper edge portion of the pot wall between the legs of the hook portion (col. 5, lines 10-53).

For claim 3, Ireland et al. as modified by Smith (emphasis on Ireland et al.) further teach including providing a second retainer, similar in shape to said first mentioned retainer, and engaging the hook portion of the second retainer with the upper

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portion of the pot wall at a location spaced from the first mentioned retainer and then into the ground for temporarily holding the pot in a fixed position upon the ground at spaced-apart locations (col. 4, line 43 and drawings).

For claim 4, in addition to the above, Ireland et al. teach including arranging the stem closely adjacent to the side wall of the pot, at an angle corresponding to the angle of the pot wall (see drawings), and Smith teaches the pot has a downwardly tapered wall. Therefore, the combination of Ireland et al. as modified by Smith teaches arranging the stem closely adjacent to the side wall of the pot, at an angle corresponding to the angle of the pot tapered wall since the retainer of Ireland et al. fits right into the channel or corrugation of the container/pot, it should contour the tapered wall when combined with Smith.

For claim 5, Ireland et al. as modified by Smith (emphasis on Ireland et al.) further teach the stem lower portion enters into the ground, but are silent about said hook portion including pushing said short leg downwardly into potting material contained in the pot when engaging the hook portion over the upper edge portion of the pot. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include pushing the short leg into potting material contained in the pot when engaging the hook portion over the upper edge portion of the pot in the method of Ireland et al. as modified by Smith, depending on the amount of potting material in the pot to fill up to the rim in order to allow this "pushing" step, and depending on if one wishes to further stabilize the retainer in the pot or not. Note, soil can fall into the channel 20 of Ireland's container/pot, therefore, the hook portion 22 will be in the soil.

For claim 6, Ireland et al. teach a retainer that is capable of being use for preventing tipping of a flower pot (col. 7, lines 9-28), the retainer comprising: an elongated rod 16 formed of a substantially straight, unbent, relatively stiff wire material forming a stem portion of a length greater than the height of the pot; the stem portion having an upper end part reversely bent into a downwardly opening hook portion 22; and the stem portion being of sufficient length. Also see col. 5, lines 10-26. Note, limitations of “for preventing tipping of a flower pot, which is formed with a generally vertically arranged wall having an upper edge portion and a lower edge and a substantially closed bottom attached to the pot lower edge, for arranging the pot upon a ground surface in a location where the pot may be subjected to laterally-directed forces, which tend to tip the pot”, “for arranging the rod generally vertically adjacent the pot”, “for grasping and holding an upper edge portion of the pot”, and “for extending its lower part into the ground surface below the bottom of the pot, a sufficient distance to hold the stem portion and the pot against tipping due to said laterally directed forces applied upon the pot” are all intended use and functional language, thus, the retainer of Ireland et al. can be use as such a device for preventing tipping of flower pot, for arranging, for grasping and holding and for extending. See MPEP 2114 for functional and intended use language in an apparatus claim.

However, Ireland et al. do not specifically describe the type of container or pot with tapering walls, a closed bottom, an upper rim having an outwardly extending band encircling the upper rim.

Smith teaches a pot with a closed bottom. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a bottom as taught by Smith on the pot of Ireland et al. in order to contain soil therein, and in addition, pots with bottoms are notoriously well known in the art. In addition, it is notoriously well known in the art that flower pots are shaped with tapering wall, a closed bottom, an upper rim having an outwardly extending band encircling the upper rim. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the retainer of Ireland et al. to hold down a pot having tapering wall, a closed bottom, an upper rim having an outwardly extending band encircling the upper rim, for such pot is notoriously well known in the art.

For claim 7, Ireland et al. teach said rod material made of resilient material for resiliently grasping and holding said upper edge portion of the pot wall within the hook portion (col. 5, lines 10-53).

For claim 8, Ireland et al. are silent about said retainer stem having a lower straight portion and an upper end portion bent outwardly of the lower stem portion for fitting around, and receiving, the adjacent portion of the pot band. Smith teaches a support for a flower pot wherein a retainer stem having a lower straight portion and an upper end portion bent outwardly of the lower stem portion for fitting around, and receiving, the adjacent portion of the pot band (see fig. 2 at refs. 21,23). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an upper end portion bent outwardly of the lower stem portion for fitting around the adjacent portion of the pot band as further taught by Smith on the retainer of

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Ireland et al. in order to further provide stability to the pot by contouring the retainer to the outline of the pot.

For claim 9, Ireland et al. teach said hook being vertically elongated, and said rod material being resilient for receiving and resiliently gripping an upper edge portion of the pot wall within the hook portion (see fig. 2, where ref. 22 is pointing at and col. 5, lines 10-53).

For claim 10, Ireland et al. teach said hook portion having a free leg formed with a free end shaped to penetrate and extend into material contained in the pot when the hook portion receives the upper edge portion of the pot wall. Note, again, the functional language of “to penetrate and extend into material contained in the pot when the hook portion receives the upper edge portion of the pot wall”, which the hook portion of Ireland et al. can perform that function. See MPEP 2114.

For claim 12, Ireland et al. teach said hook portion being formed with a leg portion that extends downwardly and laterally toward the stem portion to provide a space for receiving said upper edge portion of a pot, and said wire material being sufficiently resilient so that said pot portion is resiliently gripped in the space (col. 5, lines 10-53). Note, again, the functional language of “to provide a space for receiving said upper edge portion of a pot”, which the hook portion of Ireland et al. can perform that function. See MPEP 2114.

For claim 13, Ireland et al. teach said hook portion having a hook leg portion extending downwardly adjacent said stem portion for receiving the upper edge portion of the pot wall, and with the hook leg portion having a free lower end, and the stem

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portion having a free lower end for respectively penetrating the contents of the pot and the ground adjacent the outside of the pot wall when the hook portion holds the edge portion of the pot wall. Note, again, the functional language of “for receiving the upper edge portion of the pot wall” and “for respectively penetrating the contents of the pot and the ground adjacent the outside of the pot wall when the hook portion holds the edge portion of the pot wall”, which the hook portion of Ireland et al. can perform those functions. See MPEP 2114.


Response to Arguments

3. Applicant's arguments with respect to claims 1-10,12,13 have been considered but are moot in view of the new ground(s) of rejection.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen
Primary Examiner
Art Unit 3643

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